

COPY

ADVISORY OPINION NO. 2000-25

Issued On October 5, 2000 By The  
WEST VIRGINIA ETHICS COMMISSION

**OPINION SOUGHT**

A **County Board of Education Member** asks if the Board may award a contract to the hospital where her spouse is employed.

**FACTS RELIED UPON BY THE COMMISSION**

The Board Member's husband is a physician employed on the staff of a local hospital which operates as a private not-for-profit corporation. The Board is considering bids for certain health care services and would like to contract with the hospital to provide those services.

**CODE PROVISIONS RELIED UPON BY THE COMMISSION**

W. Va. Code § 6B-2-5(d)(1) provides in pertinent part that . . . no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control. . . .

W. Va. Code § 6B-1-2(c) provides in pertinent part that . . . certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official or public employee from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

W. Va. Code § 61-10-15 states in pertinent part: It shall be unlawful for any member of a county commission . . . or any member of any other county or district board or for any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control.

## **ADVISORY OPINION**

Both the Ethics Act and W. Va. Code § 61-10-15 prohibit public servants from having a personal financial interest in a public contract over which their public positions give them control. The Ethics Act's prohibition in W. Va. Code § 6B-2-5(d) applies not just to public servants, but also to their spouses and businesses in which they, or their spouses, have an ownership interest of more than ten per cent. W. Va. Code § 61-10-15 goes beyond the coverage of the Ethics Act to include any business with which public servants or their spouses are associated as owners or employees.

W. Va. Code § 61-10-15 is a criminal statute which applies only to certain county personnel, including the members of county Boards of Education. Violation of W. Va. Code § 61-10-15 is a misdemeanor and grounds for removal from office. The Ethics Commission is responsible to advise public servants about W. Va. Code § 61-10-15, but has no role in its enforcement, and is without authority to grant exemptions from its operation.

It would not be a violation of the Ethics Act for a county Board of Education to transact business with a company that employed a Board Member's spouse, so long as neither the spouse nor the Board Member has an ownership interest of more than ten per cent in the company, and the Board Member took no part in the Board's action. It would be a violation of W. Va. Code § 61-10-15 for the Board to transact business with the employer of a Board Member's spouse, even if neither the spouse nor the Board Member have any ownership interest in the company at all, and even if the Board Member takes no part in the Board's action.

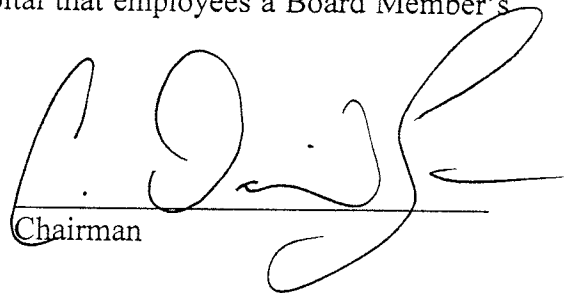
The West Virginia Supreme Court of Appeals explained the policy considerations on which W. Va. Code § 61-10-15 is based more than fifty years ago in Hunt v. Allen, 131 W. Va. 627, 53 S.E.2d 509 (1948):

Membership of a board of education is a matter of high public trust charged with the most sacred governmental duty known to us. The office should be filled by persons of the highest character procurable and our Legislature has undertaken to throw safeguards around that office in order that the discharge of its high responsibilities shall be jeopardized as little as possible. Code, 61-10-15, is one of these safeguards. It forbids a pecuniary interest by a member of the board of education in any contract with the board. As we have already pointed out, it goes far beyond imposing a penalty upon actual corruption. It recognizes as a matter of public policy that a pecuniary interest might, and in many instances would, subject members of boards of education to harmful suspicion of corruption and that in some instances there would be created a borderland where the distinction between honesty and corruption would not be pronounced. Wishing to avoid discriminations that might result from considering the question of degree, our Legislature very wisely forbade members of boards of education from having a pecuniary interest directly or indirectly in any sort of contract with a board of education of which they were a member, providing that it should be a criminal offense to do so.

The West Virginia Supreme Court of Appeals has concluded that employees have an indirect financial interest in the contracts of their employers. In Summers County Citizens League, Inc. v. Tassos, 179 W. Va. 261, 367 S.E.2d 209 (1988), the Court ruled that it would be a violation for a school board to do business with a company which employed a school board member.

Even where their financial interest in Board business with their employer is negligible, their interest in the financial health of their employer is substantial and confronts Board members with the type of divided loyalty that W. Va. Code § 61-10-15 was created to avoid. Those who are responsible for spending public funds should not have to take into account their own financial interests, or those of their employers, when deciding where and how to spend public funds.

The Commission finds that the fact that the private organization which employs the Board Member's spouse is a not-for-profit corporation does not provide an exception to the statutory prohibition in question. Therefore, the Commission finds that it would be a violation of W. Va. Code § 61-10-15 for the Board to contract for medical services with a hospital that employs a Board Member's spouse.



Chairman